



# The Attorney General of Texas

January 3, 1978

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An Equal Opportunity  
Affirmative Action Employer

Honorable Clema D. Sanders  
Executive Director  
Texas Board of Private  
Investigators and Private  
Security Agencies  
P. O. Box 13509  
Austin, Texas 78752

Open Records Decision No. 183

Re: Whether certain in-  
vestigative files of Board  
of Private Investigators  
and Private Security Agencies  
are public under Open Records  
Act.

Dear Ms. Sanders:

You request our decision in regard to three requests which you have received for investigative files and related materials. In the first, you have been requested to disclose information concerning the activities of certain Board investigators on specified dates. The request asks for the files of the cases under investigation by a named investigator, and for the weekly investigators' reports of six named investigators covering the date of April 30, 1977. You have denied the request for the information and contend that it is excepted from required public disclosure under section 3(a)(3), article 6252-17a, V.T.C.S., the Open Records Act. The request is also for the file on a particular complaint against a specific person. You state that this latter information does not exist to your knowledge.

It is your position that all of your investigative files are excepted from required public disclosure under section 3(a)(3), which excepts

(3) information relating to litigation of a criminal or civil nature . . . to which the state . . . is, or may be, a party . . . that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection . . . .

*litigation  
exception*

The section 3(a)(3) exception does not apply as a blanket exception for all investigative files of the Board or similar licensing agencies, but requires a determination by the Attorney General whether the particular information should be withheld in order to avoid premature disclosure of information which could be detrimental to the State's interest in a particular case.

The Board of Private Investigators and Private Security Agencies is a licensing agency and one of its duties is to investigate alleged violations of the provisions of the Act. V.T.C.S. art. 4413 (29bb), § 11(a)(2). Section 44 of the Act provides criminal penalties of a fine not to exceed \$500 and imprisonment in jail not to exceed one year, or both, for violations of most provisions of the Act. A typical offense investigated is the charge that a person is engaging in the business of private investigation without a license. Sec. 13(a), (b). The Act is enforced against unlicensed persons by criminal complaint, and was only recently amended to provide authority to enjoin violations by action brought by the Attorney General in a district court. See Acts 1977, 65th Leg., ch. 746, at 1873; V.T.C.S. art. 4413 (29bb), § 11A(e).

The section 3(a)(3) exception is applicable prior to, as well as during, litigation, but the anticipation of litigation must be a reasonable one related to a specific matter. Attorney General Opinion H-483 (1974); Open Records Decision No. 126 (1976). The mere chance of litigation is not sufficient to warrant withholding of information. Open Records Decision Nos. 139 (1976); 80 (1975); 29, 27 (1974). not

You have submitted two files in connection with this request. One includes a complaint dated November 2, 1976, against a person not licensed by the board who is alleged to have undertaken to conduct an investigation for hire in 1970. The last contact the complaining person had with the subject was a telephone call in 1975. An Offense Report dated November 19, 1976, includes notes of interviews with the complainant's attorney and a law enforcement officer concerning this incident. There are memoranda in the file dated April 12, 1977; May 2, 1977; and July 18, 1977. These memoranda are notes concerning attempts to locate the subject. The statute of limitation on misdemeanor offenses is two years. Code Crim. Proc. art. 12.02. There is no specific information in the file indicating that the subject may have committed a violation of the Private Investigators and Private Security Agencies Act which could still be prosecuted. Since there is no reasonable anticipation of criminal litigation

concerning any activity of the subject dealt with in this file, we do not believe that the section 3(a)(3) exception is applicable. It is our decision that this file should be disclosed.

The other file did not originate from a complaint, but from information in the nature of a "tip" concerning the activity of an unlicensed person. The file consists of the report of the receipt of the information, an investigator's "Offense Report" dated November 12, 1976, relating the circumstances which gave rise to the suspicion of a possible violation of the Act. The investigator noted the status of the matter as "unfounded" but "incomplete." A memorandum to the file dated May 3, 1977, reports an unsuccessful attempt to determine the whereabouts of the person whose conduct is being investigated.

While the file does not contain an express promise of confidentiality to the person offering the information about a possible violation of the Act, the nature of the information makes it clear that there was an expectation by the person reporting his suspicion that the fact of the "tip" would not be made public. We have previously recognized that the informer's privilege is applicable in situations where a citizen with knowledge of a possible violation of a criminal law might be deterred from voluntarily reporting it to the appropriate officials if his identity were required to be made public. Thus, we believe that the information in this file which would disclose the identity of the informant is excepted from required public disclosure under section 3(a)(1) as information deemed confidential by judicial decisions recognizing the informer's privilege. Open Records Decision Nos. 176; 172; 156 (1977); 49 (1974).

informer  
tip

We can find nothing in this file which provides a basis for a determination that litigation can be reasonably anticipated. The file was established on a report of a mere suspicion of possible violation of the Act, and that report was investigated and determined to be unfounded. We do not believe that a file can be withheld indefinitely under section 3(a)(3) on the basis that some future information or some future conduct on the part of the person investigated might be discovered which might lead to litigation.

Our decision relates to the file before us, and is not intended to preclude a future claim that the identity of a suspect under investigation for possible violation of law should be withheld in order to avoid impeding an ongoing investigation, to facilitate arrest of a suspect, or otherwise

to preserve the State's interest in prosecuting a case. See Open Records Decision No. 127 (1976) at 9 (identity of suspect in arson investigation excepted from disclosure). We simply decide that nothing has been presented which suggests that such a basis exists for withholding information in regard to these files, except the identity of your informant in the second case.

The first request also asks for the weekly investigators' reports covering the date of April 30, 1977, for six named investigators. You have submitted four such reports, and advise us that two of the investigators, being Division Chiefs, do not make weekly reports. The first page of the Weekly Report contains no information which we can determine should be withheld from disclosure under section 3(a)(3). Two of the reports have a second page attached which details the mileage traveled and includes the name and addresses of persons contacted in connection with certain investigations. In Open Records Decision No. 141 (1976), we said that travel records of the State Auditor's staff members who were conducting a special investigation into possible criminal conduct could be withheld from required public disclosure under the section 3(a)(3) exception, when the district attorney responsible for the prosecution determined it should be withheld. In that case, disclosure would have revealed details of the State's case as to location and identity of potential witnesses. Nothing has been presented to us which would permit us to determine that such a reason exists to withhold any of the information in these reports. It is our decision that these reports are not excepted from disclosure under section 3(a)(3).

The second request is for "all reports of investigations made by Board investigators at the request of State agencies." The third is similar and requests: "All reports, documents, records and expense vouchers resulting from investigations undertaken by field agents employed by the Board or other Board personnel for or on behalf of other State agencies or unrelated to the private investigation or private security business." In connection with these requests, you have submitted an affidavit by J. R. McWhirter which alleges twelve instances of requests by assistant attorneys general for information or other assistance. Additional affidavits and memoranda provide more detail on the listed instances numbered 1, 2, 3, 7, 8, 9, 10, and 11. Interestingly enough, the affidavits were all prepared after the request was received and do not constitute the type of information normally involved

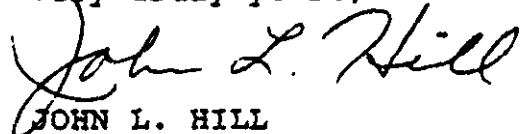
in responding to a request under the Open Records Act. See Open Records Decision No. 87 (1975). While the citizens' requests ask for information concerning investigations conducted for any other State agency, the only information you have submitted to us for decision relates to requests allegedly made by assistant attorneys general and are contained in the affidavits prepared after the request was received. As noted below, we believe the affidavits should be released, and this office will voluntarily release the result of our investigation into the matters raised in the affidavits. If information concerning investigations conducted for other State agencies exists, it is presumed public under section seven of the Open Records Act, and should be promptly produced for inspection by the requestors.

You have declined to make public the information submitted for our decision, but you do not claim it is excepted from required public disclosure under a particular exception in section 3 of the Act. We have inspected the information to determine whether any law or fact appears which would make the information confidential or bring it within an exception to the Act. See Open Records Decision No. 125 (1976). We have not found any such basis on which the information may be withheld except in one instance.

Item numbered 9 in Mr. McWhirter's affidavit concerns a request for information by an assistant attorney general about a case in Houston in which the name of a certified public accountant was alleged to have been forged to a financial statement submitted to obtain credit. The assistant attorney general represents the Texas State Board of Public Accountancy. An investigator for your office investigated and prepared a report of the information he obtained, which includes a copy of the accused person's Personal History and Arrest Record and copies of documentary evidence collected by the Houston Police Department in connection with the forgery case pending against the accused. Personal History and Arrest Records have been held to be excepted from required public disclosure under article 3(a)(8) of the Open Records Act. We believe that documentary evidence in a police file in a pending case is excepted from required public disclosure under sections 3(a)(8) and 3(a)(3). Information may be transferred between State governmental agencies without violating its confidentiality or destroying its confidential character. Attorney General Opinion H-242 (1974). It is our decision that the Personal History and Arrest Record and copies of the documentary evidence in the criminal case are excepted from required public disclosure under sections 3(a)(8) and 3(a)(3), even when held by your agency.

In summary, the only information submitted in connection with the first request which is excepted from required public disclosure is the identity of the informant in one of the cases investigated. It is excepted under section 3(a)(1) as information deemed confidential by judicial decisions recognizing the informer's privilege. As to the information submitted in connection with the second and third requests, the only materials excepted are the Personal History and Arrest Record, and copies of documentary evidence noted above, which are excepted under section 3(a)(8), the law enforcement records exception.

Very truly yours,



JOHN L. HILL  
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman  
Opinion Committee

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